

No. 50113-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MATTHEW and AMY JOHNSON, and
MARK and KATHERINE SCHOMAKER

Appellants,

v.

LAKE CUSHMAN MAINTENANCE CO.

Respondent

BRIEF OF APPELLANT

Carmen Rowe
Attorney for Appellants

Gryphon Law Group PS
1673 S. Market Blvd. #202
Chehalis, WA 98532
WSBA No. 28468

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND STATEMENT OF THE CASE.....	1
II. ASSIGNMENTS OF ERROR	3
III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR...	6
IV. STATEMENT OF PRIMARY FACTS	9
A. Property development; creation of LCMC and Easement	9
B. Historical use of the Easement.....	11
C. Historical use of the Property underlying the Easement	14
D. Problems with the Easement.....	15
V. STATEMENT OF PROCEEDINGS BELOW.....	17
VI. LEGAL ARGUMENT	19
A. Standard of review.	19
B. Evidence before the trial court: Testimony subject to LCMC's Motion to Strike (Assignment of Error No. 1)	20
1. Trial court erred in striking portions of Matt Schomaker's Declaration	21
2. Trial court erred in striking portions of the Schomaker Declaration.....	22
C. There are questions of fact regarding the validity of the Easement (Assignment of Error No. 2).....	24

1. Lack of authority to grant easement.....	25
2. Easement not validly created by Short Plat.....	26
3. Easement invalid as there is a common grantor/grantee	30
D. Questions of fact as to the meaning and scope of “exclusive” in the Easement (Assignment of Error No. 3)	33
1. Interpretation of deeds	34
2. Deed is ambiguous with respect to “exclusive” use of the Easement.....	34
3. Ambiguity as to meaning of “exclusive”	35
4. Easements excluding use of servient owners inconsistent with Washington Law	37
5. Intent a question of fact: Did Lake Cushman Company intend to functionally divide the Property as if the Easement were a separate parcel?	39
E. Trial court failed to define “park and road purposes” as necessary with respect to determining validity and scope of Easement (Assignment of Error No. 4)	42
F. Trial court erred in quieting title in the Easement to LCMC to the exclusion of any use of Johnson and Schomaker as leaseholders, and issuing an injunction as to any future use (Assignment of Error No. 5)	42
1. Cannot quiet title until resolution of material facts on scope of Easement	43
2. LCMC did not seek a permanent injunction	43

3. Injunction can only address unreasonable interference, which is a question of fact	43
4. Claim of injunction is not ripe	44
G. Questions of fact regarding trespass, timber trespass and waste; lack of findings (Assignment of Error No. 6)	45
F. Trial court did not have authority to issue an injunction against future legal claims (Assignment of Error No. 7)	45
VI. CONCLUSION	47

APPENDIX

Order on Defendant's Motion to Strike Portions of Declarations
Submitted in Opposition to Summary Judgment entered December
8, 2016

Order Granting in Partial Summary Judgment entered December 8,
2016

TABLE OF AUTHORITIES

Cases – Washington

<i>Bogomolov v. Lake Villas Condominium Ass'n of Apartment Owners</i> , 131 Wn. App. 353 (2006)	37
<i>Brown v. Voss</i> , 105 Wn.2d 366 (1986)	20
<i>Clements v. Travelers Indemn. Co.</i> , 121 Wn.2d 243 (1993)	20
<i>Crisp v. VanLaecken</i> , 130 Wn. App. 320 (2005)	25
<i>Coastal Storage Co. v. Schwartz</i> , 55 Wn.2d 848 (1960)	30
<i>Ellis v. City of Seattle</i> , 142 Wn.2d 450 (2000)	19, 20
<i>Evich v. Kovacevich</i> , 33 Wn.2d 151 (1949)	44
<i>Kesinger v. Logan</i> , 113 Wn.2d 320 (1989)	40
<i>King County Fire Prot. District No. 15 v. Hous. Auth. of King County</i> , 123 Wn.2d 819 (1994)	21
<i>Kucera v. Dep't of Transp.</i> , 140 Wn.2d 200 (2000)	43
<i>Littlefair v. Schulze</i> , 169 Wn. App. 659 (2012)	42
<i>McCoy v. Lowrie</i> , 44 Wn.2d 483 (1954)	26
<i>Niemann v. Vaughn Community Church</i> , 154 Wn.2d 365 (2005)	34
<i>Owen v. Burlington N. & Santa Fe R.R.</i> , 153 Wn.2d 780 (2005)	19
<i>Rainier View Ct. Homeowners Ass'n v. Zenker</i> , 157 Wn. App. 710 (2010)	20, 26, 33, 35, 39
<i>Sunnyside Valley Irrigation Dist. v. Dickie</i> , 149 Wn.2d 873 (2003)	20, 33, 39

<i>State v. Darden</i> , 145 Wn.2d 612 (2002)	21
<i>Thompson v. Smith</i> , 59 Wn.2d 397 (1962)	38, 39, 44
<i>Truckweld Equip. Co. v. Olson</i> , 26 Wn. App. 638 (1980).....	31
<i>Whatcom County v. Kane</i> , 31 Wn. App. 250 (1981)	46
<i>Young v. Key Pharm. Inc.</i> , 112 Wn.2d 216 (1989).....	20, 26
<i>Yurtis v. Phipps</i> , 143 Wn. App. 680 (2008)	46

Case – Michigan

<i>Von Meding v. Strahl</i> , 219 Mich. 398, 609, 30 N.W.2d 363 (1948)	27
---	----

Statutes and Rules

CR 56(c)	19
CR 56(e)	2, 6, 21, 22, 23, 32
ER 402.....	2, 6, 21, 22, 23
RCW 58.17.165	24, 26
RCW 64.04.020	24, 25

Other Authority

Rest. 3d Property, Servitudes (2000) § 1.2 com. c., p.14	36
--	----

I. INTRODUCTION AND STATEMENT OF THE CASE

Johnson and Schomaker are long-term sub-lessees of the residential property at issue (Property), which in turn is under a 99-year lease between Lake Cushman Company (lessees) and the City of Tacoma (lessor). The property adjoins Lake Cushman.

The issues on appeal revolve around the validity of, scope of and respective rights to an asserted exclusive easement (Easement) over the Property granted from Lake Cushman Company to Lake Cushman Maintenance Company (LCMC) for “park and road purposes.” The easement affects nearly half of the Johnson/Schomaker Property.

Problems arose when Johnson and Schomaker discovered significant problems relating to the use of the Easement, coupled with a lack of security from LCMC. LCMC refused Johnson and Schomaker’s requests to enforce park rules and the covenants, curb the destructive activity and help them protect their property and ensure the safety of their families.

Johnson and Schomaker face use of the Easement outside restrictions to private residential use; unauthorized use such as

camping and late-night partying; and significant illegitimate use by non-members outside park hours. Johnson and Schomaker suffer from garbage and alcohol and drug paraphernalia on their property, including areas outside the easement, and the associated ongoing nuisance and security and liability risks.

LCMC members make only light use of the easement, using a path to a viewpoint from time to time. Johnson and Schomaker's predecessors made improvements on the easement, including a boat shed, fence and gate. LCMC never objected to these improvements, and they have never hindered use of the easement.

LCMC's security and enforcement are significantly lacking, and fail altogether to address times outside park hours when the problematic use is at its highest. Johnson and Schomaker asked LCMC to manage the illicit use. It refused. They attempted to curb the risks and damage, such as posting no-trespassing signs (which would not exclude legitimate users of the easement) and barriers to keep people from wandering off the path and onto their Property.

Johnson and Schomaker brought this action raising several questions about the easement, including its validity or, if valid, the scope of the easement and Johnson and Schomaker's right to use

their own Property. Johnson and Schomaker sought damages from the illicit use as well as damages from timber cutting and property waste done by LCMC outside its rights under the easement.

LCMC brought a motion for summary judgment asking the trial court to find that there was a valid easement; that such easement was exclusive such that Johnson and Schomaker had no right to use the underlying property at all as leaseholders; and to quiet such title of the easement to LCMC.

LCMC further sought an injunction to eject long-standing improvements and Johnson and Schomaker's more recent efforts to protect their Property, and permanently enjoin them from any future use of the easement area. LCMC sought dismissal of the claims of timber trespass, waste and nuisance. LCMC also sought to permanently prohibit Johnson and Schomaker from ever again raising any claims of title or interest in the easement.

The trial court granted summary judgment on all but the nuisance claims, which the parties later dismissed by stipulation.

II. ASSIGNMENTS OF ERROR

Johnson and Schomaker first assign error to the trial court's order granting LCMC's motion to strike portions of declarations

APPELLANTS' OPENING BRIEF

submitted by Johnson and Schomaker in their response to LCMC's motion for summary judgment. The remaining errors pertain to the concurrent order on LCMC's summary judgment motion.

Assignment of Error No. 1: The trial court erred when struck portions of the Declaration of Matt Johnson (Matt Johnson Declaration)¹ and Mark Schomaker (Schomaker Declaration) based on lack of personal knowledge (CR 56(e)) and as irrelevant (ER 402). CP 27 at ¶¶ 2 and 4.

Assignment of Error No. 2: The trial court erred when it held that LCMC held a valid easement for park and road purposes over Johnson and Schomaker's property. (Conclusion of Law No. 1; Finding of Fact No. 4 – also as a Conclusion of Law regarding legal conclusion of conveyance of a valid easement).

Assignment of Error No. 3: The trial court erred when it found that the Easement² was unambiguously exclusive for the benefit of LCMC members and lessees at the Lake Cushman development, excluding any right of Johnson or Schomaker to use

¹ As there are two Johnsons, appellant Matt Johnson and attorney Robert Johnson, abbreviated reference to their respective declarations include their first names. No disrespect is intended to the other declarants.

² To extent not previously defined, the factual section below provides formal definitions of the capitalized terms.

their underlying Property as owners of the Property. (Conclusion of Law No. 1; Findings of Fact Nos. 4 through 8 – also as Conclusions of Law regarding legal effect of the Easement).

Assignment of Error No. 4: The trial court erred when it failed to define the scope of “park and road purposes”, or to make findings and conclusions with respect to Johnson and Schomaker’s claims that LCMC overburdened or was misusing the Easement. (No findings or conclusions addressed these arguments.

Assignment of Error No. 5: The trial court erred when it quieted title in the Easement to LCMC, and issued a permanent injunction against Johnson and Schomaker relating to their use of the Easement. (Finding of Fact No. 1 (LCMC’s role with respect to managing the Park, goes to intent); Conclusions of Law 2 and 3; Finding of Fact No. 8 – also as Conclusion of Law regarding legal import of competing claims to Easement).

Assignment of Error No. 6: The trial court erred when it dismissed Johnson and Schomaker’s claims for Trespass, Waste and Timber Trespass with prejudice, and failed to set forth questions of fact or conclusions of law on same. (Order Paragraph 1)(No findings or conclusions explicitly addressed these claims).

Assignment of Error No. 7: The trial court erred when it found LCMC entitled to a permanent injunction against Johnson and Schomaker prohibiting them or any successors or heirs from ever asserting any right title or interest in or to the exclusive Easement without the requisite showing. (Conclusion of Law 3).

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. **Re: Assignment of Error No. 1.** Whether the trial court erred when it struck all but the first three sentences of Paragraph 4 of Matt Johnson's Declaration based on lack of personal knowledge under CR 56(e) and lack of relevance under ER 402, where (1) several statements were personal knowledge based on Mr. Johnson's experience as owner of the Property and as an LCMC member; and (2) where testimony as to extended use of passes by LCMC and resulting acts and damages go squarely to Johnson and Schomaker's claims on intended scope of the Easement, overburdening of the Easement, and claims of trespass and nuisance. Order at CP 27 ¶ 2; Declaration CP 48-49; and

Whether the trial court erred when it struck the following portions of the Schomaker Declaration (Order at CP 27 ¶ 4; Declaration CP 122-126): (1) Paragraph 4 in its entirety as "feelings" inadmissible under ER 402, where the last three

sentences directly cite Covenants relevant to the claims (Declaration CP 123); (2) Paragraph 6 under CR 56(e) and ER 402 as pure speculation, personal beliefs and irrelevant, where (a) Mr. Schomaker correctly recites a declaration and exhibit LCMC submitted in support of its motion for summary judgment; (b) Mr. Schomaker statements made based on personal knowledge with respect to payment of taxes on his Property; and (c) Mr. Schomaker made statements with respect to LCMC practices based on personal knowledge Mr. Schomaker would have as a member of LCMC (Declaration CP 123-124). All statements are relevant to Johnson and Schomaker's claims as they go to use of, claim of right to and intent of the Easement.

B. **Re: Assignment of Error No. 2.** Whether the trial court erred when it held that the Easement was valid, where there were questions of fact (1) as to whether Lake Cushman Company had authority to grant the Easement and (2) as to whether Lake Cushman Company and LCMC were essentially the same entity under law; and where the trial court failed to make findings of fact to support the final conclusion that the Easement was valid.

C. **Re: Assignment of Error No. 3.** Whether the trial court erred when it found that the Easement was unambiguously exclusive, without any rights of Johnson or Schomaker to use their

underlying Property other than as members of LCMC, where (1) there were multiple questions of fact with respect to intent of the Easement, impacting interpretation of same; and (2) a reasonable person could interpret the “exclusive” language contrary to the trial court’s finding that the deed unambiguously excluded Johnson and Schomaker from using their underlying Property as leaseholders, such as an interpretation that the easement was exclusive only with respect to anyone outside LCMC exercising easement rights.

D. **Re: Assignment of Error No. 4.** Whether the trial court erred when it failed to address or define the Easement’s scope of “park and road purposes,” or determine whether LCMC was overburdening the Easement or using it for improper purposes, where (1) there were multiple questions of fact with respect to intent of the Easement, and thus interpretation of same; and (2) the trial court failed to make any findings of fact or conclusions of law with respect to this argument, as necessary to support findings on the validity or overburdening of the Easement.

E. **Re: Assignment of Error No. 5.** Whether the trial court erred when it quieted title in the Easement to LCMC, and found that LCMC was entitled to a permanent injunction relating to interference with use of the Easement, where LCMC did not seek a permanent injunction in its motion for summary judgment; or,

alternatively, there are multiple questions of fact on several issues relating to validity of the Easement, use of the Easement, scope of the Easement, interpretation of the Easement, and/or whether such use interfered with LCMC's use of the Easement.

F. **Re: Assignment of Error No. 6.** Whether the trial court erred when it dismissed Johnson and Schomaker's claims for Trespass, Waste and Timber Trespass, where (1) there are questions of fact with respect to whether the use of the Easement overburdened the Easement, as overburdening could give rise to claims of trespass, timber trespass and/or waste, and (2) the trial court did not make any findings of fact or conclusions of law addressing these claims or in support of its dismissal.

G. **Re: Assignment of Error No. 7.** Whether the trial court erred when it found that LCMC is entitled to a permanent injunction against Johnson and Schomaker prohibiting them from ever asserting any future right in title or interest in or to the Easement, where the trial court failed to make the necessary findings to support this extraordinary remedy and are no facts showing a pattern of abusive and frivolous litigation.

IV. STATEMENT OF PRIMARY FACTS

A. Property Development; Creation of LCMC and Easement

The City of Tacoma (City) owns the underlying land at issue, including a large tract commonly referenced as the Lake Cushman Development (Development). CP 175 (LCMC memorandum).³ The City leased the Development to Lake Cushman Company for development under a 99-year lease (Primary Lease). CP 138-150.

Lake Cushman Company subleases platted lots to individual residential property owners under long-term leases. CP 294. This includes Lot 62, which Lake Cushman Company short-platted into four lots in 1983 (Short Plat). CP 152-159. The residential property at issue is Lot 1 of the Short Plat (Property). CP 161-163. LCMC entered into an 81-year lease with Stephen and Carol Brandt (Brandt) in 1983 (Brandt Lease). CP 160-164. Johnson and Schomaker assumed the Brandt Lease in 2014. CP 165-172.

In 1966 Lake Cushman Company created LCMC, a non-profit homeowners' association, to manage and care for the Development's common areas.⁴ CP 293; CP 249 and 251-258. All

³ LCMC provided only argument of counsel with respect to many of these broader facts. Argument of counsel is not admissible evidence. Green v. A.P.C., 136 Wn.2d 87, 100 (1998). Johnson and Schomaker adopt the general characterization here to help with context, without waiving their objections to other arguments of counsel unsupported in the record.

⁴ LCMC argues in its memorandum that management included the Division 14 Park, which adjoins the Property (CP 176), and elsewhere that the Easement is part of the Park. This is, however, argument by APPELLANTS' OPENING BRIEF

lessees of the lots are members of LCMC. 69-73 (LCMC by-laws). LCMC's primary purpose is to manage, maintain and operate the care for the common areas for the use and benefit of LCMC's members, the lessees in the Development. CP 249.

On February 24, 1983, Lake Cushman Company signed a deed (Deed) titled "Easement" as leaseholders of Lot 62 "for the exclusive use of the Lake Cushman Maintenance Co., its successors and assigns, for park and road purposes over [Lot 62]." (Easement) CP 151. The Easement takes up almost half of Johnson and Schomaker's Property. CP 152.

In 1983 Lake Cushman Company recorded the Short Plat. CP 152-159. Lake Cushman concurrently recorded the Deed purporting to convey the Easement. CP 151.

B. Historical Use of the Easement.

Both parties addressed the historical use of the Easement in discussing intent and scope of the Easement. The authorized use of the Property underlying the Easement is limited to residential purposes. The Lake Cushman Protective Covenants (Covenants) from 1971 provides in its first restriction and covenant that "[a]ll lots and improvements shall be used for residential purposes and uses

counsel unsupported by the record. Counsel does not cite anything for the statement that the Park included the Easement; with respect to management cites Stephen Whitehouse's declaration (CP 293-294), which does not mention Division 14 Park.

incidental thereto only”. CP 97. The 1983 Short Plat designates that “[r]oads and easements as they appear on this short plat shall be designated ‘Private’”. CP 152. The 1983 Brandt Lease, recorded after the Easement, provided that the Property “shall be used for residential purposes for a single family only.” CP 161. Johnson and Schomaker relied on the Covenants and the leases in expecting that the Property would be residential in nature. CP 48; CP 167 (Acceptance of Assignment of Lease).

LCMC members make nominal use of the Easement. CP 49; CP 122. At most, members occasionally walk along a path along to what is referenced as a viewpoint or knoll overlooking the lake. See, e.g., CP 118; CP 250; 285-286. The path and viewpoint form a rough triangle over the South-western corner of the Easement (CP 299), with actual member use limited to the paths and the top of the knoll. Id. This is what the parties generally reference as the “upper” or “hilly” area. See e.g. CP 285 (knoll at the top of a rise); witnesses’ descriptions of the area as a viewpoint).

The viewing area is bare dirt, rocks and moss. CP 299. The viewpoint has never been maintained. CP 50; CP 118.

While the viewpoint area was used a lot around 1979, use then declined, especially after the adjoining dock was damaged and never repaired. CP 112. A path still remained, but the area was

now dangerous because of the lack of fencing. Id. Since then, the area was little used through at least 1992. CP 118. As the years went by the path was used less and less, and then primarily by people sleeping there that had nowhere else to sleep; dumping of garbage; and partying, leaving behind camp fires and trash. CP 112. There was a boardwalk 35 years ago (CP 285), a picnic bench at one time (CP 250), and an old fence running along the trail and the steep bluff (CP 299), but there is nothing on record in the summary judgment of any past attempts or intent by LCMC to replace or repair any of these features. At least one LCMC member requested that LCMC erect a fence to the viewpoint to prevent accidents; LCMC did not. CP 112-113.

LCMC offers little in the way of showing regular or heavy use of the viewpoint and the path leading up to the area, and no evidence of any legitimate use in any other areas of the Easement. LCMC's primary testimony on usage relates to the Park, where the boat launch, parking lot and Lake Standstill areas are. CP 250, 261 (Curley Declaration); CP 123 (Schomaker Declaration in response).

Johnson and Schomaker submitted testimony that there is no member use or use during park hours north of the path or viewpoint, or east of the path leading to the path/viewpoint. See, e.g., CP 118; CP 123. None have used the lower flat area of the

Easement, where there is a driveway for the owners of the Property and related improvements since at least 1982. CP 47-48; CP 117-118. The only evidence of use of the path or viewpoint outside the odd member use is the illicit use after Park hours by non-members, such as after-hours drinking, drug use and camping. CP 49; CP 122. This testimony of use comes from members with decades of experience with the Park and Property. Bonnie Bunmaster has had a lot at Lake Cushman since 1982, with a lot in Division 14 since 1992. CP 117-118. Gary Christman has had his lot since 1979, and lives full time just up the road from the Park. CP 111. Mr. Schomaker testifies based on his ownership of the Property in addition to 24 previous years as leaseholder of another lot and a total of 40 years using the lake. CP 122.

C. Historical Use of the Property Underlying the Easement.

With respect to use of the portion of the Property underlying the Easement, Johnson and Schomaker's predecessors built several substantive improvements at the lower portion of the Property underlying the Easement in the mid-1980s, including a boat garage, fence and gate. CP 47-50 (Matt Johnson Declaration ¶¶ 2, 11); CP 123; CP 299. Subsequent owners have continuously and exclusively used the lower drive to access these areas. CP 47-

50; CP 113; CP 118; CP 123. There is no evidence that LCMC objected to these improvements or use before this litigation.

At the request of LCMC, Dan Holman conducted a survey of the area in March of 2016 (Holman Survey). CP 297-299. The Survey shows an old rail fence along the trail to the primitive viewing area, and a fence running along at the top of the steep bluff adjoining the viewing area. CP 299. This fence is within the Easement. Holman noted that it is a rail and post from the old fence that blocks the trail. Id. With respect to the improvements by prior owners on the Property within the Easement, Holman noted the old fence with the gate, and the access to the lower portion of the Property (coming up to and past the gate up to the shed). Id.

D. Problems with the Easement.

Upon purchasing their leasehold interest in the Property, Johnson and Schomaker discovered frequent after-hours use of the Easement by non-members, or, even if members, inappropriate after-hours use of the Easement. Much of the activity appears to be illegal (drug use, under-age drinking), and other disruptive activities such as late-night partying and some camping. CP 50-51; CP 123.

The activity results in damage to the Property and interferes with Johnson and Schomaker's use of the Property. CP 50. Johnson and Schomaker have found considerable debris, largely

alcohol and drug paraphernalia. CP 50, 123. The activities and the resulting detritus pose a serious threat to the families. CP 50-51.

Compounding the problem is that LCMC offers little in the way of interest in or providing security, enforcing the rules of the Park or general Covenants of the Development, or to otherwise control and mitigate the illegitimate and dangerous use of the Easement and keep the area safe. CP 50-51; CP 123; CP 112-113; CP 128. There is very little security at the Park, and no evidence that LCMC manages the path and viewpoint at all. While LCMC closely monitors several of its other parks, LCMC only patrols this Park from 9 or 10 to 5 on weekends and holidays. CP 50-51; 123. As there is no locking gate there is unfettered access to the Park and Easement. CP 50. This creates an ongoing problem. Id.

Johnson and Schomaker reported the activity to LCMC, and asked that they help manage the situation. CP 50. LCMC refused and offered nothing in the way of support. Id. LCMC offered no assurance that those using the easement have the right to be there, or act in a lawful or safe manner. CP 52.

Johnson and Schomaker posted “no trespassing” signs in an attempt to discourage inappropriate use. CP 51. Johnson and Schomaker did not intend to exclude LCMC members, believing this would not preclude members from access as members were

not trespassers. Id. LCMC forcibly removed and/or damaged these signs. Id. Johnson and Schomaker proposed to put up a fence or other barrier to discourage people from going off the path. CP 50.

LCMC offers no evidence on summary judgment that Johnson and Schomaker's actions have blocked or hindered access to the trail or viewpoint. The only reference to any blockage is in Dave Curley's Declaration, where he simply states "[t]he portion of the park which has recently been blocked by Schomaker and Johnson has a walking trail to the top of a knoll that is used as a viewing and picnic area."⁵ CP 250. LCMC submitted no testimony or evidence of exactly how Johnson and Schomaker allegedly blocked the trail, or how their current use would block any actual and certain intended use of the Easement.

V. OVERVIEW OF PROCEEDINGS BELOW

Johnson and Schomaker filed suit seeking clarity and a determination on various issues with respect to the validity of the Easement, their rights in using their Property, the scope of use of the Easement, and claims of timber trespass, waste and nuisance. CP 315-219. Johnson and Schomaker sought to invalidate the Easement or, alternatively, affirm their right to use the Easement as leaseholders of the Property; determine the appropriate scope of

⁵ The section below relating to the injunction addresses this point in detail.

the Easement, any overburdening of the Easement, and limit LCMC's use to the appropriate scope; and damages for timber trespass, waste and nuisance.

In an amended answer, LCMC counterclaimed primarily seeking to either establish the validity of the Easement or find that LCMC acquired similar rights through adverse possession or prescriptive easement, a determination that such Easement precluded Johnson and Schomaker from using their underlying Property as leaseholders, to quiet title in the Easement to LCMC, and to enjoin Johnson and Schomaker from any use of the Easement outside their status as LCMC members. CP 310-314.

LCMC moved for summary judgment seeking an order in favor of its counterclaims to quiet title to the Easement, and finding that the Easement was exclusive such that Johnson and Schomaker had no rights to use the underlying Property as leaseholders. CP 174-189 (Motion and Memorandum); CP 136-173 (Declaration of Robert Johnson); CP 249-263, 285-288, 291-292, 293-294, and 297-299 (five declarations from LCMC's prior motion for preliminary injunction); CP 39-46 (LCMC Reply).⁶

LCMC sought to dismiss Johnson and Schomaker's claims (trespass, waste, timber trespass, nuisance and quiet title). Id.

⁶ These are collectively the nine moving pleadings from LCMC that the trial court considered on summary judgment. CP 20-21
APPELLANTS' OPENING BRIEF

While the trial court entered a permanent injunction against Johnson and Schomaker from using the Easement in any way other than as LCMC members, and permanently prohibit them from bringing any future claims relating to rights, title or interest in the Easement, LCMC did not actually seek a permanent injunction. Id.

The trial court entered an order primarily granting LCMC's motion on December 8, 2016, in addition to the injunctive relief referenced above. CP 20-25. The trial court denied LCMC's motion with respect to the claims of nuisance. The trial court later entered a stipulated order dismissing the nuisance claims without prejudice and confirming the conclusion of the case. CP 17-19. Johnson and Schomaker timely filed their notice of appeal. CP 4-16.

VI. LEGAL ARGUMENT

A. Standard of Review.

This case involves mixed questions of fact and law. Review of a summary judgment is de novo. Ellis v. City of Seattle, 142 Wn.2d 450, 458 (2000) (citation omitted). The Appellate Court performs the same inquiry as the trial court. Owen v. Burlington N. & Santa Fe R.R., 153 Wn.2d 780, 787 (2005). A party is entitled to summary judgment only where "the pleadings ... and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c).

The moving party bears the initial burden of showing the absence of an issue of material fact, regardless of who bears the ultimate burden of proof at trial. Young v. Key Pharm. Inc., 112 Wn.2d 216, 224 (1989). The court “must consider all facts and reasonable inferences in the light most favorable to the non-moving party.” Ellis v. City of Seattle, 142 Wn.2d at 458, citing to Clements v. Travelers Indemn. Co., 121 Wn.2d 243, 249 (1993). The court should grant summary judgment only “ ‘if from all of the evidence, reasonable persons could reach but one conclusion.’ ” Id. The court must resolve any doubt as to the existence of a genuine issue of material fact against the moving party. Id. at 226. Material fact is one upon which the outcome of the case depends in whole or in part. Clements, 121 Wn.2d at 249.

Interpretation of an easement is a mixed question of fact and law. Rainier View Ct. Homeowners Ass’n v. Zenker, 157 Wn. App. 710, 719 (2010)(hereinafter Rainier View), citing Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 880 (2003)(hereinafter Sunnyside Valley). Injunctive relief is viewed for an abuse of discretion when issued based on established facts. Brown v. Voss, 105 Wn.2d 366, 373 (1986).

B. Evidence before the trial court: Testimony subject to LCMC's Motion to Strike. (Assignment of Error 1)

A preliminary matter is what evidence was before the trial court. The trial court improperly struck testimony of Matt Johnson and Mark Schomaker that is admissible and relevant to their claims.⁷ The Court reviews the trial court's ruling on a motion to strike for an abuse of discretion. King County Fire Prot. District No. 16 v. Hous. Auth. of King County, 123 Wn.2d 819, 826 (1994).

The trial court based its decisions on either CR 56(e) or ER 402. ER 56(e) provides that affidavits in response to a motion for summary judgment "shall be made on personal knowledge."

ER 402 states that "[a]ll relevant evidence is admissible." ER 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "The threshold to admit relevant evidence is very low. Even minimally relevant evidence is admissible." State v. Darden, 145 Wn.2d 612, 621 (2002).

⁷ It is sometimes difficult to discern exactly which portions of a paragraph were an inadvertent inclusion in striking the entire paragraph, and which were a specific finding of the court. Johnson and Schomaker recognize many of these were likely an inadvertent inclusion; they seek to clarify for the record which precise facts were before the trial court. While in many cases there are thus alternative citations, these are examples where the trial court did not properly weigh Johnson and Schomaker's evidence on summary judgment.

1. *Trial court erred in striking portions of the Matt Johnson Declaration.*

The trial court struck all but the first three sentences of Paragraph 4 of Matt Johnson's Declaration based on lack of personal knowledge under CR 56(e) and lack of relevance under ER 402. Order CP 27 ¶ 2; Declaration CP 48.

Mr. Johnson's statement about the increasing number and changing nature (private versus public) of passes issued by LCMC for use of the disputed area is based on personal knowledge Mr. Johnson has as an LCMC member, further supported by an exhibit LCMC submitted in its moving papers. CP 261-262.

Mr. Johnson's statements that the expanded issuance of passes has increased traffic and use, that this increased use was such that LCMC cannot control the users' behavior on the Easement, and that there is a resulting loss of enjoyment of and damage to the Property, reflect personal knowledge based on Mr. Johnson's experience as an owner and user of the Property. These statements go to intended scope of the Easement, overburdening of the Easement, and the trespass and nuisance claims.

2. *Trial court erred in striking portions of the Schomaker Declaration.*

The trial court struck Paragraph 6 of the Schomaker Declaration in its entirety, based on finding the testimony was pure speculation and not based upon personal knowledge as required

APPELLANTS' OPENING BRIEF

under CR 56(e), and personal beliefs not relevant under ER 402.⁸
Court Order at CP 27 ¶ 4; Schomaker Declaration at CP 123-124.

The third sentence is Mr. Schomaker's understanding of payment of past taxes on his Property, and knowledge as to who paid (or in this case has not paid) taxes on his Property since his purchase. CP 123-124 ¶ 6. These are statements reasonably ascertained from Mr. Schomaker's knowledge as the owner of the Property and in making his own tax payments. LCMC disputes these facts and provides factual information in challenging a similar statement by Matt Johnson (referencing Johnson Declaration at CP 51-52 ¶ 19). CP 37. That does not negate Mr. Schomaker's testimony as to his own knowledge. Rejecting LCMC's same argument, the trial court did not strike the similar statement in Matt Johnson's declaration. These facts are relevant as they go to intent and historical use and claim of right to the Easement, which is relevant to the challenged scope of the Easement.

The second and fourth sentences recite testimony and an exhibit submitted by LCMC, and an exhibit properly introduced by Mark Johnson.⁹ The fifth sentence states knowledge of a fact Mr.

⁸ The trial court's actual order cited "ER 42"; the above presumes this to be a mistake, meant to be a citation to ER 402.

⁹ There are other examples of the trial court striking testimony where the testimony simply cited to the record. In addition to examples cited above, there is (a) all but the first sentence of Paragraph 4 of the Schomaker Declaration simply citing to a declaration and exhibit LCMC submitted in APPELLANTS' OPENING BRIEF

Schomaker would have as an LCMC member, further supported by an exhibit submitted by LCMC in its moving papers. (CP 261-262). These statements again go to scope of use and intent of Easement.

C. There are questions of fact regarding the validity of the Easement. (Assignment of Error No. 2)

LCMC argued that the Deed contained the necessary requirements under RCW 64.04.020 (CP 177-178); or, alternatively, that the Short Plat created the Easement under RCW 58.17.165 (CP 178-179). Johnson and Schomaker submitted evidence raising genuine questions of fact as to whether this was true. The first issue is Lake Cushman Company's lack of authority to grant the Easement, and the inability to create an invalid easement simply by virtue of recording it. The second is whether Lake Cushman Company and LCMC were in essence a common grantor/grantee.

The trial court did not enter the findings of facts necessary to support the conclusory statements that Lake Cushman Company successfully granted LCMC an easement. CP 21-22. Johnson and Schomaker assign error not only to the trial court's conclusion that there is a valid deed and easement, but also to the lack of necessary findings to support this conclusion.

its moving paper. (Order CP 27 ¶ 4; Declaration CP 123); and (b) Paragraph 6 of Matt Johnson's Declaration citing provisions in an exhibit LCMC did not object to. (Order CP 27 ¶ 2; Declaration CP 49). Small points, but examples of errors in how the trial court weighed testimony.

APPELLANTS' OPENING BRIEF

1. Lack of authority to grant easement.

Lake Cushman Company had no authority to execute the Easement. It was thus void *ab initio*. Determining authority is necessary for a proper decision. If there is no Easement, there is no further analysis and the trial order in error in its entirety excepting the analysis of decisions on the motion to strike.

Lake Cushman Company's only interest in the Property was a leasehold interest. CP 138-150. The Primary Lease gives Lake Cushman Company very limited rights to encumber the property via easements, for purposes of utilities and only with express written permission. CP 144 (Section VII "Platting and Improvements"). The only other allowance is for purpose of borrowing necessary capital, limited to the leasehold interest. CP 146. All development, including platting, must be with written approval of City. CP 144-145.

Thus, without written agreement from the City, Lake Cushman Company had no authority to grant this Easement and burden the Property. CP 138-150 (Primary Lease); RCW 64.04.020 ("[e]very deed shall be in writing, signed by the party bound thereby"); Crisp v. VanLaecken, 130 Wn. App. 320, 323 (2005)(an easement is the right to use the land of another; and is both a burden on the land as well as an interest in the land).

Neither Lake Cushman Company nor LCMC offered any testimony or evidence establishing such authority. LCMC thus

failed to meet its initial burden on summary judgment to show the absence of any issue of material fact. Young, 112 Wn.2d at 225.

Additionally, LCMC has no right to assert the validity of the Easement knowing the grantor lacked the requisite authority. CP 138-150 (recorded Primary Lease); CP 151 (Easement executed pursuant to provisions of Primary Lease).

2. Easement not validly created by Short Plat.

LCMC argues that even if the deed is invalid, that inclusion of the Easement in the Short Plat cures any defect or creates a new easement. LCMC was correct in stating that “a party may create a private easement by including the grant in a plat.” Rainier View, 157 Wn. App. at 719-720, citing RCW 58.17.165.¹⁰

However, RCW 58.17.165 simply says that a Short Plat can operate as a quitclaim deed with respect to “[a]ny dedication, donation or grant”. A quitclaim deed only transfers whatever rights the grantor actually *had*. RCW 64.04.050; McCoy v. Lowrie, 44 Wn.2d 483, 486 (1954).

As stated above, LCMC presented no evidence that Lake Cushman Company had the right to convey the Easement, or any

¹⁰ The Rainier View court did not determine the effect of an easement in a short plat when the grantor did not have authority to grant the easement. The court did address use of extrinsic evidence in interpreting the easement, note that interpretation of an easement is a mixed one of law and fact, and demonstrated how easily plat language can be ambiguous. This will be relevant in discussions on intent below.

other applicable authority. If Lake Cushman Company did not have authority to grant the Easement to begin with, the act of recording the Short Plat neither validates the Easement nor creates an alternate one. The Short Plat, operating as a quitclaim deed, only conveyed what rights Lake Cushman Company had to give.

The Short Plat did not purport to create the Easement. On its face, it only marks an “*Estm.*” Park-Road (emphasis added). The Short Plat attached a legal description for Lot 1 (the Property), that includes “SUBJECT TO an easement in favor of the Lake Cushman Maintenance Co. for road and park purposes, recorded under Auditor’s File No. 414987.” LCMC relies on this to show that the Short Plat *created* the Easement. That is not an accurate reading. The Short Plat did not define or create an easement. It referenced one. Reference to an invalid deed/easement does not make it valid.

Washington law has not looked squarely at the issue, but the Michigan Supreme Court answered “no” to the questions of (1) whether someone with a right to land, but not the landowner, could transfer easement rights, and (2) whether subsequent recorded documents can validate such transfer. von Meding v. Strahl, 219 Mich. 598, 609, 30 N.W.2d 363 (1948). The court addressed two easements conveyed by deed, in one case conveyed several times. While an out of state case, it does provide persuasive guidance.

The von Meding court addressed a rather complicated situation involving multiple lots. The controversy centered about which parcels had easement rights over a strip crossing Parcel C.

The owners of Parcel F claimed an easement over Parcel C by grant where the owner of Parcel D granted an easement over the strip on Parcel C to benefit of Parcel F. But, analogous to Lake Cushman Company's leasehold interest here, the owner of Parcel D did not have an ownership interest. His interest was his own easement over Parcel C. Pertinent here, the court found:

They [owner of Parcel D] had no legal right or authority to convey to the [owner of Parcel F] or to any one else any rights in Parcel C, or the strip. *A right or way cannot very well by [sic] granted by deed, estoppel or otherwise, by anyone but the landowners.*

Id. at 606 (citation omitted)(emphasis added).

For another parcel, Parcel G, a purported easement across Parcel C ran down several steps on the chain of title. But, the court still rejected the easement, finding that the successive recordings did not change the fact the easement was invalid to begin with. In that instance, a prior owner of Parcel C purchased Parcel G, but by then had no further interests in Parcel C. This owner acquired Parcel G by deed with no mention of an easement. The owner later executed a recorded mortgage to the property that included conveyance of a right of way over Parcel C. The land sold at

foreclosure, and the defendant's predecessors purchased the land and received a sheriff's deed. The deed conveyed similar interests as those of a quitclaim deed: " 'all the said lands ... with ... *all the estate, right title and interest which said mortgagor had* in the same lands and tenaments' ". Id. at 608 (emphasis added). The purchaser at foreclosure then deeded the property to the defendant, also conveying the easement over the strip. Id. 607-608.

But, as the court pointed out: (1) there was no showing that the owner executing the mortgage with the easement had any right or authority to convey the easement to begin with; (2) the sheriff's deed conveyed only the interest that the mortgagor actually had; and (3) as the mortgagor had no interest in the servient estate, he could not create or transfer any rights to the easement.

In an argument closely paralleling those of LCMC, the defendants then argued that the effect of recording the three deeds along the way (the mortgage, the sheriff's deed and the deed to them) was to put the owner of Parcel C of notice of an easement, thus subjecting Parcel C to the easement in question. The court rejected this theory in a holding relevant here:

But the recording of an instrument cannot, of itself, make an invalid grant valid. In effect, it is contended that one may convey away another's land, and that the mere recording of the conveyance by the grantee, without more, gives rise to rights against subsequent purchasers of the land. To state the contention in this form demonstrates its fallacy.

What is mean by the recital “subject to all easements of record for right of way to and from the beach” in [the owner of Parcel C’s] deed? We are of the opinion what was meant was “subject to all *valid* easements of record.” (citation to Iowa Supreme Court omitted)(emphasis added).

Id. at 608-609.

Reference to the Easement in the Short Plat does not cure its invalidity. The Short Plat could not create or convey an Easement Lake Cushman Company had no authority to grant.¹¹

3. *Easement invalid as there is a common grantor/grantee.*

There are genuine issues of material fact as to whether Lake Cushman Company and LCMC were sufficiently separate to constitute independent entities in executing the Easement. CP 48-49 (Matt Johnson Declaration ¶ 5); CP 56-64 (Exhibit A, LCMC Articles of Incorporation (Articles)); CP 68-75 (Exhibit C, LCMC By-laws). If not, it is appropriate to disregard the corporate form for purposes of identifying the grantor and grantee of the Easement. Where the grantor and grantee are the same, there can be no easement. Coastal Storage Co. v. Schwartz, 55 Wn.2d 848, 853 (1960)(“One cannot grant an easement to oneself, as an owner cannot have an easement in his own property.”).

¹¹ If the Court finds that the Short Plat created an easement, there remains factual questions with respect to terms, exclusivity and scope of use. Sections below separately address these topics.

“The question of whether the corporate form should be disregarded is a question of fact.” Truckweld Equip. Co. v. Olson, 26 Wn. App. 638, 643 (1980). There are numerous points of commonality between Lake Cushman Company and LCMC, with LCMC perpetually subservient and intimately tied to Lake Cushman Company. The Trustees of Lake Cushman Company and those that formed LCMC were identical. CP 62-63. Lake Cushman Company not only maintained substantial control such that LCMC did not truly operate independently, but from the evidence on record was still in *actual and exclusive* control of LCMC in 1983. The Articles kept the entities tied, explicitly providing that LCMC “shall *at all times* hereafter be a joint and mutual association of the above named incorporators [and other members]”. CP 61 (Article III). There is no evidence that this association terminated by 1983.

Lake Cushman Company incorporators did not pass off their control of LCMC until recording by-laws eight years later in 1991 (By-Laws), admitting lessees as LCMC members and allowing election of members to the Board of Trustees as of January 1, 1992. CP 68-75. The incorporators of LCMC mandated their perpetual status as LCMC members. CP 70 (By-Laws Article II(1)).

LCMC points to the “common practice” of developers setting up HOAs and the “destructive” effects of finding the deed void (CP

178), but bare arguments of counsel do not constitute the necessary evidence to support a motion on summary judgment. CR 56(c), CR 56(e). But even if considered, LCMC points to the wrong worse-case scenario. LCMC claims that holding that “a deed” from a developer to a HOA is void “would destroy most homeowners’ associations in Mason County.” CP 178. But this is not about “a deed”, or all deeds in Mason County. This is about whether *this* deed is valid. LCMC suggests that a court should never question a deed transfer from a developer to a HOA just because it is such a deed. That would be the scenario with dire consequences.

The problem is the use by Lake Cushman Company, a for-profit corporation, of LCMC, a non-profit homeowner’s association, to operate what appears to be a for-profit venture. LCMC has come to operate the Park like a business. See, e.g., CP 48; CP 261-262. The Property, Park and Easements were supposed to be private and residential. CP 97 (Covenants); CP 152 (Short Plat). CP 161 (Brandt Lease); CP 167 (Johnson and Schomaker Acceptance of Assignment of Lease). A finder of fact could reasonably find that creating a “non-profit” company under the complete control of a for-profit company was intentionally executed to evade a duty both with respect to taxes and with respect to the leaseholders. With respect to the Easement, Lake Cushman Company burdened nearly half of

the Property with an Easement LCMC says excludes Schomaker and Johnson's use as leaseholders altogether. While Johnson and Schomaker challenge this extreme interpretation of exclusive in context of this Easement, it still is a different story if the Easement is used for residential versus business purposes. Disregarding the corporate veil is necessary to prevent an unjustified burdening of the Property for purposes of operating a for-profit venture under the umbrella of a non-profit homeowner's association.

D. Questions of fact as to the meaning and scope of "exclusive" in the Easement. (Assignment of Error No. 3)

The trial court found that the Easement was unambiguously exclusive for the benefit of LCMC,¹² with the extreme result of excluding Johnson and Schomaker from any use of their leasehold interest in the underlying Property. There are several reasonable interpretations of "exclusive" in the context of this specific Easement, with the interpretation adopted by the trial court the least reasonable of them. As the deed is ambiguous, the reviewing court looks to the intent of the original parties. Intent is a question of fact and the trial court erred in granting summary judgment.

¹² The trial court's actual order is oddly worded, as Finding of fact No. 5 implies that the members of LCMC and lessees at the Lake Cushman Development are themselves beneficiaries of the Easement. CP 22. Johnson and Schomaker assign additional error to this finding to the extent it might be interpreted that way.

1. Interpretation of deeds.

Interpreting a deed is a mixed question of fact and law. Rainier View, 157 Wn. App. at 720; Sunnyside Valley, 149 Wn.2d at 880. The primary objective is to ascertain the parties' intent. Niemann v. Vaughn Community Church, 154 Wn.2d 365, 376 (2005). Intent of the original parties is a question of fact. Rainier View, 157 Wn. App. at 720; Sunnyside Valley, 149 Wn.2d at 880.

The court can review extrinsic evidence to determine the intent of the original parties, the circumstances of the property when the easement was conveyed, and the practical interpretation in light of the parties' prior conduct when a deed is ambiguous. Rainier View, 157 Wn. App at 720. A deed is ambiguous when its terms can be understood as having more than one meaning. Id. Intent of the parties is a factual question; only once the court determines the necessary facts does the court then “ ‘apply[-] the rules of law to determine the legal consequences of that intent’ ” in construing a deed. Niemann, 154 Wn.2d at 374-375.

2. Deed is ambiguous with respect to “exclusive” use of the Easement.

The use of “exclusive” in this particular Deed and Easement is subject to more than one reasonable interpretation.¹³ Was it that

¹³ Lake Cushman Company “declare[-] an easement for the exclusive use of the Lake Cushman Maintenance Co., its successors and assigns, for park and road purposes over the [Property].” CP 151.

LCMC's rights to the Easement were exclusively for park and road purposes and no other uses? Was it that LCMC held the only (exclusive) right to use the Easement for park and road purposes? Was it that there could be no other easement holder, and LCMC had exclusive *easement* rights? These possibilities are all more reasonable and consistent with Washington law than finding that LCMC gained what is tantamount to rights of an owner in fee simple: that LCMC was the only entity that could ever use the Easement at all, and that the servient Property owners could not use their own property even if such use did not interfere with use of the Easement. The trial court erred in choosing this interpretation.

As this was a summary judgment, the important point is that the trial court had a choice. As there was more than one reasonable interpretation, the Easement was ambiguous. The trial court made no findings of fact supporting its conclusion that "exclusive" meant what the court said it did. Nor could it, as there were genuine issues of material fact regarding intent to resolve before addressing the legal consequences of that intent. Rainier View, 157 Wn. App at 720.

3. *Ambiguity as to meaning of "exclusive"*

LCMC argued without supporting citation that trial court should read the term "exclusive" by using the Merriam Webster

Dictionary definition. CP 43. While resort to a common definition is sometimes appropriate, it is not in this context. Washington law on deeds and easements govern how a court is to interpret “exclusive” in this case. Even so, “exclusive” rights in this Easement can be read more than one way, as set out above, all consistent with the Merriam-Webster definition to be able to “exclude” someone. That is precisely the question. Who or what, exactly, was intended to be excluded? That is a question of fact.

Nor does Washington law favor LCMC and the trial court’s extreme interpretation of “exclusive” to the point of excluding Johnson and Schomaker from using their own Property. As LCMC recognized, the law does not favor exclusive easements. CP 182 (citing several out of state cases). LCMC also recognized that “‘[t]he degree of exclusivity of rights conferred by an easement ... is highly variable’”, and can mean “[a]t one extreme” keeping anyone e/se from using the easement at all, or “[a]t the other extreme.” excluding even the servient owner. CP 181-182, citing Rest.3d Property, Servitudes (2000) § 1.2 com. c., p.14. LCMC thus recognizes, contrary to its argument and the trial court’s conclusion, that “exclusive” is not self-defining, and that the trial court’s conclusion is an extreme one. There was a question of scope of exclusivity. That is a question of intent, and thus of fact.

Washington law in general rejects the extreme end of “exclusive” that the trial court adopted. Washington has never found “exclusive” to mean that the dominant easement holder’s use is exclusive even as to the rights of the servient property owner, barring the owner from exercising the owner’s usual rights: use the land in any way so long as such use does not interfere with the easement holder’s use of the easement itself. There are exceptions, such as condominium law and certain public utilities, but those are rare and specific to those types of easements.

4. *Easements excluding use of servient owners inconsistent with Washington law.*

LCMC’s reference in its moving papers to condominium law (CP 182) is apt to demonstrate the distinction between this specialized area of law and the law that applies to the vast majority of cases. In the case LCMC cited, Bogomolov v. Lake Villas Condominium Ass’n of Apartment Owners, 131 Wn. App. 353 (2006), the court’s discussion centered around the issue of whether designating specific areas for the exclusive use of individual owners effectively converted those areas from common to limited common areas.¹⁴ Condominiums are unique property arrangements with

¹⁴ The Bogomolov case addressed rather unusual circumstances, whether shorelands and an existing dock were “common areas”. The association argued that building out slips for individual owners was not a reduction of common areas or expansion of limited common areas. In

unique needs. By statutory definition, limited common areas are those “allocated ... for the exclusive use of one or more but fewer than all units.” RCW 64.34.020(27). Frequent examples are decks attached to a particular unit or parking spaces, such as in Bogomolov in discussing boat slips. A condominium is also governed by contract. The Bogomolov Declaration specifically defined limited common areas as those “reserved for the exclusive use of the apartments to which they are assigned, to which apartment there is hereby reserved an exclusive easement for the use thereof.” The definition specifically stated exclusivity as to *all* use, not a specific use (such as “park and road purposes”). And again, this all falls under the unique statutory framework that carves out limited common elements as property owned by the Association but exclusive to use by a particular owner. This is not one unit owner having exclusive rights to use another unit owner’s property.

The general rule of law in Washington is that “where a right of way is established by reservation, the land remains the property of the owner of the servient estate” and “[s]ervient owners have a right to use their land ‘for purposes not inconsistent with its ultimate use for the reserved purpose.’ ”, to the point of rather significant use. Thompson v. Smith, 59 Wn.2d 397, 407-409 (1962)(allowing a

disagreeing, the court upheld the statutory voting requirements for conversion of common areas to limited common areas.

concrete pad in the easement as it did not interfere with its current use). The measure is not the nature of the servient owner's use, but rather whether it directly interferes with actual current use. *Id.*¹⁵ The extensive body of caselaw consistently interpreting easements such that servient owners can still use their own property, with only extremely narrow exceptions, supports the conclusion that the Easement is ambiguous as the nature of exclusivity is in question.

5. *Intent is a question of fact: did Lake Cushman Company intend to functionally divide the Property as if the Easement were a separate parcel?*

The analysis then turns to “review [of] extrinsic evidence to show the original parties’ intent, the circumstances of the property when the easement as conveyed, and the practical interpretation given the parties’ prior conduct or admissions.” *Rainier View*, 157 Wn. App at 720, citing *Sunnyside Valley*, 149 Wn.2d at 880.

There were no findings of fact with respect to the “exclusivity” factor, or regarding the scope of use at all. The trial court simply concluded that LCMC held an exclusive interest that prohibited Johnson and Schomaker from using their Property.

LCMC did not meet its burden in establishing the absence of any genuine issue of material fact with respect to any alleged intent

¹⁵ The question of what is a proper use by the servient owner is a question of fact. *Thompson*, 59 Wn.2d at 408. The section on Assignment of Error No. 5 (Section VI (F)) regarding the trial court’s injunction against Johnson and Schomaker’s use, addresses this component.

to create an “exclusive” easement with the meaning they argue. LCMC does not submit any testimony from the grantor. LCMC points to circumstances to support the extreme definition of “exclusive”. But these are questions of fact. Reasonable persons could come to differing conclusions based on the evidence submitted by LCMC. A court can only grant summary judgment if reasonable persons could reach but one conclusion, with all facts and reasonable inferences viewed in the light most favorable to Johnson and Schomaker. Kesinger v. Logan, 113 Wn.2d 320, 325 (1989)(evidence did not support claimed easement).

LCMC claims that its role to “manage and care for” the parks means that it should have unlimited use of the Easement.¹⁶ CP 293; CP 249 and 251-258. But reasonable minds could differ.

LCMC points to the Primary Lease with its stated purpose to develop the significant acreage around the lake. But that also included development of private individual lots, such as Johnson and Schomaker’s. It does not mean that LCMC was obligated to develop *this* area for public use. There is no evidence to that effect,

¹⁶ LCMC argues in its memorandum that management included the Division 14 Park (adjoining the Property), and that the Easement is part of the Park. This is, however, argument by counsel unsupported by the record. The only citation is to the declaration of Stephen Whitehouse (CP 293-294), which does not mention Division 14 Park or any other particular area. While a small point of error, it demonstrates the broad-brush LCMC used and that the trial court incorrectly adopted on summary judgment.

APPELLANTS’ OPENING BRIEF 40

and that assertion is inconsistent with the strict limitation of the Property to residential use. CP 152 (Short Plat designates easements as “Private”); CP 161 and 167 (Brandt Lease and Assignment to Johnson and Schomaker).

Lake Cushman Company developed seven major community parks and a golf course. CP 259-260. If Lake Cushman Company meant for the Easement to functionally be part of the Park, it could have platted that land with the Park, or carved out a separate parcel. It did so in other cases. See CP 49, 77-78 and 79-82 (Matt Johnson Declaration Exhibits, two lots Lake Cushman Company leased directly to LCMC for park purposes); CP 49, 153 (Short Plat notes a boundary line adjustment to provide property to the North to Lake Cushman Resort for area they traditionally used).

A reasonable inference is that if Lake Cushman Company meant to limit use of the Easement as LCMC argues, it would have carved out the piece of land, not simply written an easement over it. Historical LCMC use is limited to members walking a very small and distinct area of the Easement. The land as has been used is consistent with the topography – a viewpoint of the lake at the top of a knoll. It is wooded. The adjoining park is self-contained, there is no evidence of any plans to expand it. There is no practical reason to expect the Easement to be developed such that Johnson

and Schomaker could not use their Property at all. The Property has several improvements from the mid-1980s that LCMC never objected to, and there is no evidence they ever interfered with LCMC's use of the Easement. It is a question of fact what was intended in creating the Easement under the overall circumstances of this Property and Development.

E. Trial court failed to define “park and road purposes” as necessary with respect to determining validity and scope of Easement. (Assignment of Error No. 4)

The trial court did not address Johnson and Schomaker's challenge to what “park and road purposes” really means, which in turn goes to both the question of intent as to scope (as discussed above) and whether LCMC overburdened the Easement. The trial court ended its analysis with the summary conclusion that LCMC could use the Easement and Johnson and Schomaker could not, except as LCMC members. Johnson and Schomaker set out several questions of material fact with respect to what “park and road purposes” means, as set out above in discussing intent in how “exclusive” was really meant to apply. The court cannot determine whether the use of the Property is reasonable until there is a determination of the underlying facts as to the particular use of the Easement. Littlefair v. Schulze, 169 Wn. App. 659, 665 (2012).

F. Trial court erred in quieting title in the Easement to LCMC to the exclusion of any use of Johnson and

Schomaker as leaseholders, and issuing an injunction as to any such future use. (Assignment of Error No. 7)

1. *Cannot quiet title until resolution of material facts on scope of Easement.*

The Appellate Court reviews the trial court's decision for an abuse of discretion. Kucera v. Dep't of Transp., 140 Wn.2d 200, 209 (2000). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. Id. at 209.

As set out above, there are questions of fact to resolve before there can be a determination on whether LCMC is entitled to quiet title, or what right would be affirmed dependent on intent. The trial court abused its discretion in not first addressing these.

2. *LCMC did not seek a permanent injunction.*

Nowhere in LCMC's pleadings on summary judgment did LCMC seek a permanent injunction. The trial court granted relief beyond what was sought.

3. *Injunction can only address unreasonable interference, which is a question of fact.*

Even if an injunction were at issue, the fact-finder must first determine what respective rights the parties have before the trier of fact can then address whether any of Johnson and Schomaker's uses constitute an unreasonable interference.

For example, whether the servient owner can erect and maintain fences or gates across or along an easement depends

again on the intent of the original parties, together with the manner in which the easement has historically been used and occupied. Evich v. Kovacevich, 33 Wn.2d 151, 162 (1949); Thompson, 49 Wn.2d at 408 (what may be considered a proper use by the servient owner is a question of fact that depends on the extent and mode of use of the easement in question). The respective rights of both the servient and dominant estate holders “must be construed to permit a due and reasonable enjoyment of both interests so long as that is possible.” Id.

4. *Claim of injunction is not ripe.*

Any claim by LCMC for a permanent injunction (though none is made in its summary judgment pleadings) is premature. Thus, Johnson and Schomaker’s improvements must actually interfere with LCMC’s use of the Easement before there is a claim. There are questions of fact on this point, and no evidence submitted on summary judgment as to what, if anything, actually blocks any actual use by LCMC. Until there is an actual interference, there can be no injunction. Thompson, 59 Wn.2d at 408-409 (improper to prevent use of concrete pad when the roadway not being used). As an example, the Property has several improvements that have been in the Easement for thirty years. LCMC has never found cause to complain about these improvements, and there is no

evidence that they block any current use. The trial court's injunction would require removal of even these improvements.

G. Questions of fact regarding trespass, timber trespass and waste; lack of findings. (Assignment of Error No. 7)

The trial court made no findings of fact or conclusions of law with respect to its dismissal of Johnson and Schomaker's trespass, timber trespass and waste claims. There is thus no support for this order, and the trial court abused its discretion in summarily dismissing these claims with no basis for such dismissal.

These claims are premature to decide on summary judgment given the numerous questions of law that must first be resolved regarding the scope and extent of the Easement, and then a determination as to Johnson and Schomaker's rights to the Property underlying the Easement. The fact-finder must also evaluate the respective rights under the long-term leases. Only then can the court review claims relating to damage to the Property.

H. Trial court did not have authority to issue an injunction against future legal claims. (Assignment of Error No. 7)

The trial court abused its discretion by permanently prohibiting Johnson and Schomaker from asserting any claims relating to title or interest in the Easement, to the extent that order reaches claims not already precluded by *res judicata*. LCMC did not submit argument in its briefing to restrain Johnson and Schomaker

from future litigation, and submitted no evidence to support such a drastic remedy. But the Order drafted by LCMC has that effect:

Plaintiffs and their heirs, executors, agents and assigns are *perpetually enjoined* from asserting *any right or title or interest* in or to the exclusive easement herein quieted in defendant and are further enjoined from interfering with defendant's use and enjoyment of said easement.

CP 23 (emphasis added); see also CP 22 (Conclusion of Law 3).

The trial court did not make the requisite "specific and detailed showing of a pattern of abusive and frivolous litigation" to support such an injunction. Whatcom County v. Kane, 31 Wn. App. 250, 253 (1981); Yurtis v. Phipps, 143 Wn. App. 680, 693 (2008), quoting. "[M]ere litigiousness is insufficient." Yurtis, 143 Wn. App. at 693. The trial court "must be careful not to issue a more comprehensive injunction than is necessary to remedy proven abuses, and if appropriate the court should consider less drastic remedies." Whatcom County, 31 Wn. App. at 253 (reversing an injunction enjoining the defendants from commencing litigation or filing pleadings without prior written leave of court, for lack of the requisite showing); Yurtis, 143 Wn. App. at 693 (issuing an injunction against future litigation on a specific real estate transaction after 17 years of litigating that transaction, and repeated failed lawsuits, appeals and petitions for discretionary review).

There is no evidence, showing or finding of any abuses of the judicial process. LCMC did not argue such abuses. There is no history of litigation between the parties. Johnson and Schomaker's claims were not frivolous. There is no support for enjoining future legal action beyond that already barred by *res judicata*.

VII. CONCLUSION

The evidence, when construed in the light most favorable to Johnson and Schomaker, does not support a summary judgment.

Johnson and Schomaker respectfully request that the Court

(1) reverse the trial court's order striking the specified statements in the Declarations of Matt Johnson and Mark Schomaker;

(2) reverse and remand the issues relating to validity and interpretation of the Easement claims for determinations by the finder of fact, as set forth above;

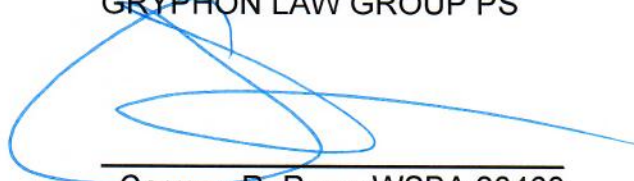
(3) reverse the injunctions issued by the trial court limiting Johnson and Schomaker's use of the Easement and barring future claims; and

(4) reverse and remand the claims for trespass, timber trespass and waste for factual determinations as set forth above.

Respectfully submitted this 11th day of July, 2017.

By:

GRYPHON LAW GROUP PS

A handwritten signature in blue ink, consisting of a large, stylized 'C' followed by a horizontal line and a small 'R'.

Carmen R. Rowe WSBA 28468

CERTIFICATE OF SERVICE

I certify that on the below date, I sent a copy of the above pleading via the Court's electronic service system to Robert Johnson, attorney for Respondent, at the following email address per agreement of counsel to accept service of pleadings via email:

Robert Johnson
rjohnson@rwjpllc.com

Dated this 11th day of July, 2017.



Carmen R. Rowe WSBA 28468



REC'D & FILED
MASON CO. WA.
2016 DEC -8 P 4:15
GINGER BROOKS, CO. CLERK

(4)

[Signature]

DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

MATTHEW A. JOHNSON and AMY K. JOHNSON, husband and wife and MARK SCHOMAKER and KATHERINE SCHOMAKER, husband and wife,

Case No.: 15-2-00335-0

Plaintiffs,

ORDER ON DEFENDANT'S MOTION TO STRIKE PORTIONS OF DECLARATIONS SUBMITTED IN OPPOSITION TO SUMMARY JUDGMENT

vs.

LAKE CUSHMAN MAINTENANCE CO., a Washington non-profit corporation,

Defendant.

THIS MATTER having come before the court on November 14, 2016, pursuant to defendant's motion to strike portions of the declarations of Gary Christman, Mathew Johnson, Bonnie Bunmaster, and Mark Schomaker, the defendant appearing by and through its attorney Robert W. Johnson of the law office of Robert W. Johnson P.L.L.C. and plaintiffs appearing by C. Scott Kee, attorney at law. The court having reviewed the pleadings on file and having heard the arguments of counsel, it is hereby ORDERED as follows:

1. Declaration of Gary Christman:

53

1 The court strikes paragraphs 9 and 10 of the declaration of Mr. Christman. Mr. Christman's
2 statements regarding settlement negotiations conducted by the parties and his hopes that the board will
3 accept a settlement in this case are not only inadmissible under ER 408, but are highly prejudicial.

4 2. Declaration of Mathew Johnson:

5 The court strikes all but the first three sentences in paragraph 4 of Mr. Johnson's declaration. The
6 declaration does not indicate that he has any true knowledge of the alleged facts regarding who purchases
7 passes from LCMC as required by CR 56(e). Additionally, what Mr. Johnson "thinks" is irrelevant and calls
8 for speculation and is inadmissible under ER 402. The court strikes paragraph 6 for lack of foundation of
9 personal knowledge required by CR56(e). Defendant did not object to the original articles of incorporation
10 being included. The court strikes the second sentence of paragraph 20, in which Mr. Johnson relays a
11 conversation with Bill Jenson which is hearsay under ER 802.

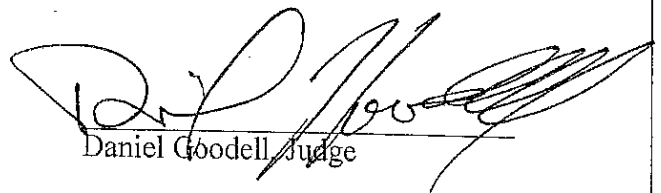
12 3. Declaration of Bonnie Bunmaster:

13 The court strikes paragraph 7 of the declaration of Bonnie Bunmaster under ER 408.

14 4. Declaration of Mark Schomaker:

15 The court strikes strike paragraph 4 of Mr. Schomaker's declaration. Mr. Schomaker's feelings
16 regarding the covenants are not evidence and are irrelevant to the issues before the court under ER 402. Mr.
17 Shoemaker's opinion of a covenant violation in the first sentence of paragraph 5 is irrelevant under ER 402.
18 Additionally, his statements in paragraph 6 are pure speculation not based upon personal knowledge and are
19 specifically stated to be his personal beliefs. The statements are not based upon personal knowledge as
20 required by CR 56(e) and his personal opinions are irrelevant under ER 42.

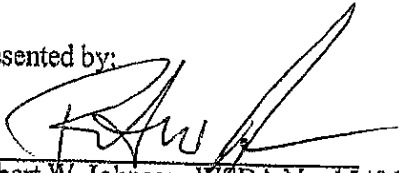
21 Dated this 8 day of December, 2016.

22
23 
24 Daniel Goodell, Judge

25 ORDER ON MOTION TO STRIKE - 2

Robert W. Johnson, P.L.L.C.
ATTORNEYS AT LAW
ANGLE BLDG. • P.O. BOX 1400
SHELTON, WASHINGTON 98584
(360) 426-9728 • FAX (360) 426-1902

1 Presented by:



2 Robert W. Johnson, WSBA No. 15486
3 Attorney for Defendant

4 Copy received, approved for entry,
5 notice of presentation waived:



6
7 C. Scott Kee, WSBA No. 28173
8 Attorney for Plaintiffs

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25 ORDER ON MOTION TO STRIKE - 3

Robert W. Johnson, P.L.L.C.
ATTORNEYS AT LAW
ANGLE BLDG. • P.O. BOX 1400
SHELTON, WASHINGTON 98584
(360) 426-9728 • FAX (360) 426-1902

REC'D & FILED
MASON CO. WA.

2016 DEC -8 P 4: 15

GINGER BROOKS, CO. CLERK

BY _____ DEPUTY
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

MATTHEW A. JOHNSON and AMY K.
JOHNSON, husband and wife and MARK
SCHOMAKER and KATHERINE SCHOMAKER,
husband and wife,

Plaintiffs,

vs.

LAKE CUSHMAN MAINTENANCE CO., a
Washington non-profit corporation,

Defendant.

Case No.: 15-2-00335-0

**ORDER GRANTING IN PARTIAL
SUMMARY JUDGMENT**

THIS MATTER having come before the court on defendant, Lake Cushman Maintenance Company's motion for summary judgment on November 14, 2016, the plaintiffs appearing represented by C. Scott Kee, and the defendant Lake Cushman Maintenance Company appearing represented by Robert W. Johnson, the court having considered the following pleadings and documents on file:

1. Defendant's motion for Summary Judgment.
2. Defendant's memorandum in support of motion for summary judgment.
3. Declaration of Dave Curley.
4. Declaration of Ben Guthrie.
5. Declaration of Dan Holman.

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT - 1

Robert W. Johnson, P.L.L.C.
ATTORNEYS AT LAW
ANGLE BLDG. • P.O. BOX 1400
SHELTON, WASHINGTON 98584
(360) 426-9728 • FAX (360) 426-1902

6. Declaration of Robert Johnson.
7. Declaration of Julie McGrady.
8. Declaration of Steven T. Whitehouse.
9. Plaintiffs' Response to Motion for Summary Judgment.
10. Declaration of Bonnie Bunmaster as modified by Court's order on motion to strike.
11. Declaration of Gary Christman as modified by Court's order on motion to strike.
12. Declaration of Matthew Johnson as modified by Court's order on motion to strike.
13. Declaration of Mark Schomaker as modified by Court's order on motion to strike.
14. Reply Memorandum in Support of Motion for Summary Judgment

The Court heard oral argument on Defendant's Motion on November 14, 2016. The Court stated its reasons for granting Plaintiff's Motion in open court on November 28, 2016. The Court now makes the following Findings of Fact and Conclusions of Law in accordance with CR 65(d):

1. Lake Cushman Maintenance Company is a non-profit corporation and homeowners' association created by Lake Cushman Co. to manage and care for the development's common areas including a park located on Lot 61 of Division 14.
2. Plaintiffs' lease Lot 1 of Short Plat 1260. This lot was originally a part of Lot 62, Division 14 of the plat and is adjacent to the Division 14 park.
3. In 1983, Lake Cushman Company short platted Lot 62 into four smaller lots by Short Plat 1260. Short Plat 1260 was recorded on May 13, 1983 under Auditor's File No. 415052, records of the Auditor of Mason County.

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT - 2

Robert W. Johnson, P.L.L.C.
ATTORNEYS AT LAW
ANGLE BLDG. • P.O. BOX 1400
SHELTON, WASHINGTON 98584
(360) 426-9728 • FAX (360) 426-1902

4. Lake Cushman Co. by deed granted LCMC an exclusive easement for park and road purposes over a portion of Lot 1 described by meets and bounds legal description. The deed was recorded on May 12, 1983, under Auditor's File No. 414987.
5. The deed unambiguously creates an exclusive easement for the benefit of members of Lake Cushman Maintenance Company and lessees at the Lake Cushman development to use the easement are for park and for road purposes.
6. The deed did not reserve any use of the surface of the property granted for park and road purposes and therefore Plaintiffs have no rights to utilize the surface of the easement property except as members of Lake Cushman Maintenance Company enjoy.
7. Plaintiffs' claim a right to use the land previously dedicated exclusively for park and road use for purposes other than as a member of Lake Cushman Maintenance Company.
8. The claim of right by Plaintiffs is without merit and casts a cloud on the title of Lake Cushman Maintenance Company's exclusive use of the easement for park and road purposes.

II CONCLUSIONS OF LAW

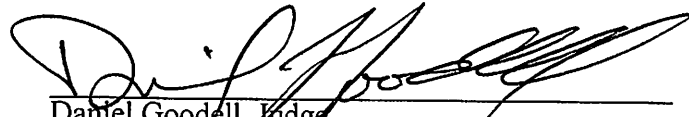
1. Lake Cushman Maintenance Company is the holder of a valid exclusive easement for park and road purposes over Lot 1. Short Plat 1260 as described by deed recorded on May 12, 1983, under Auditor's File No. 414987.
2. Defendant are entitled to a decree of this court quieting title in and to the exclusive park and road easement free and clear of the competing claims of plaintiffs.
3. Defendant is without adequate remedy at law and therefore seeks and is entitled to an injunction, permanently prohibiting plaintiffs from making any claim of title contrary to the exclusive easement

1 or interfering with defendant's and its members' quiet and peaceful enjoyment of the easement
2 described in finding of fact 4 above.

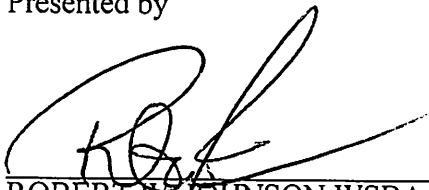
3 III ORDER

- 4 1. Plaintiffs' claims for Trespass; Waste; Timber Trespass and Quiet Title are dismissed with
5 prejudice.
- 6 2. Defendant's motion for summary judgment of plaintiff's nuisance claim is denied.
- 7 3. Lake Cushman Maintenance Company's title in and to an exclusive easement for park and road
8 purposes as set forth in finding of fact No. 4 is quieted in defendant free and clear of any claim for
9 use of the property by plaintiffs, *except for any right of use related to their membership in Lake Cushman Maintenance Company. D7 by telephone approval by attys.*
- 10 4. Plaintiffs and their heirs, executors, agents and assigns are perpetually enjoined from asserting any
11 right title or interest in or to the exclusive easement herein quieted in defendant and are further
12 enjoined from interfering with defendant's use and enjoyment of said easement.

13 Dated this 8 day of December, 2016.

14
15
16 
17 Daniel Goodell, Judge

18 Presented by

19
20 

21 ROBERT W. JOHNSON WSBA #15486
22 Attorney for Defendant

23 Copy received, approved for entry,
24 notice of presentation waived:

25 ORDER GRANTING PARTIAL
SUMMARY JUDGMENT - 4

Robert W. Johnson, P.L.L.C.
ATTORNEYS AT LAW
ANGLE BLDG. • P.O. BOX 1400
SHELTON, WASHINGTON 98584
(360) 426-9728 • FAX (360) 426-1902

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



C. Scott Kee, WSBA No. 28173
Attorney for Plaintiffs

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT - 5

Robert W. Johnson, P.L.L.C.
ATTORNEYS AT LAW
ANGLE BLDG. • P.O. BOX 1400
SHELTON, WASHINGTON 98584
(360) 426-9728 • FAX (360) 426-1902

1
2
3
4
5
6
7 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF MASON
9

10 MATTHEW A. JOHNSON and AMY K.
11 JOHNSON, husband and wife and MARK
12 SCHOMAKER and KATHERINE
13 SCHOMAKER, husband and wife,

12 Plaintiffs,

13 vs.

14 LAKE CUSHMAN MAINTENANCE CO., a
15 Washington non-profit corporation,

16 Defendant.

Case No.: 15-2-00335-0

**GR 17 AFFIDAVIT OF FAXED
SIGNATURE**

17 DECLARATION OF ROBERT W. JOHNSON:
18

19 I declare that I have examined the signature of Scott Kee on attached Order on
20 Defendant's Motion to Strike Portions of Declarations Submitted In Opposition To
21 Summary Judgment. I have discussed this matter directly with Scott Kee, and
22 confirmed with him that he signed the Order on Defendant's Motion to Strike Portions
of Declarations Submitted In Opposition To Summary Judgment that he did transmit the
same to my office via e-mail for the purpose of filing with the Court, and I recognize
the signature of Scott Kee to be his true signature.

23 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
24 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT
TO THE BEST OF MY KNOWLEDGE AND BELIEF.

25 DATED this 12 day of December, 2016.


ROBERT W. JOHNSON

DECLARATION OF FACSIMILE
SIGNATURE

ROBERT W. JOHNSON P.L.L.C.
ATTORNEYS AT LAW
ANGLE BLDG. • P.O. BOX 1400
SHELTON, WASHINGTON 98584

GRYPHON LAW GROUP PS

July 11, 2017 - 1:21 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50113-9
Appellate Court Case Title: Matthew & Amy Johnson, Appellants v. Lake Cushman Maintenance Co.,
Respondent
Superior Court Case Number: 15-2-00335-0

The following documents have been uploaded:

- 7-501139_Briefs_20170711011824D2928295_8135.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Johnson Schomaker Appellants Brief.pdf

A copy of the uploaded files will be sent to:

- rjohnson@hctc.com

Comments:

Sender Name: Carmen Rowe - Email: carmen@gryphonlawgroup.com

Address:

1673 S MARKET BLVD #202

CHEHALIS, WA, 98532-3830

Phone: 360-669-3576

Note: The Filing Id is 20170711011824D2928295